U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-97-224-52495 Office: California Service Center Date: AUG 2 1 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wholesaler and distributor of cast iron and steel products. It seeks to employ the beneficiary temporarily in the United States as an accountant, [redacted] operation. The director determined that the petitioner had not established that the beneficiary would be employed in a specialized knowledge capacity, or that a qualifying branch relationship exists between the U.S. and foreign entities.

On appeal, the petitioner states that:

> We will submit evidence of records that [redacted] (foreign entity) and [redacted] (United States entity) are owned, controlled and operated under the ownership of same groups of individual [sic].

The petitioner had indicated that additional evidence would be submitted in support of the appeal on or before July 14, 1999. To date, no additional evidence has been received. Therefore, the record must be considered complete.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

The United States petitioner was established in 1989 and states that it is a branch office of [redacted] located in Mexico. The petitioner seeks to employ the beneficiary permanently at a weekly salary of $300.

At issue in this proceeding is whether the beneficiary will be employed in a specialized knowledge capacity.

Title 8, Code of Federal Regulations, part 214.2(l)(1)(ii)(D) provides that:

> *Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge

> or expertise in the organization's processes and procedures.

In her decision, the director noted that the beneficiary's duties such as "be in charge of bookkeeping and translations of the Mexico books" do not indicate that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the accounting field.

In a letter dated November 25, 1997, the U.S. entity's president describes the beneficiary's duties as follows:

> She will be in charge of bookkeeping and translations of the Mexico books. She will be responsible to teach our current accounting people these laws and requirements. She will also be responsible to learn the U.S. laws and bookkeeping systems in order to better use our resources in the Mexico operation.

The skills described for the beneficiary are not unique skills that cannot be taught nor would they require a specialized knowledge of the petitioning company's product, processes, or procedures that surpasses the ordinary or usual knowledge of an accountant. The record contains no evidence that the beneficiary possesses an advanced level of knowledge of the processes and procedures of the petitioning entity. Upon review of the record, the petitioner has not established that the beneficiary has specialized knowledge, or that she will be employed in a capacity involving specialized knowledge. For this reason, the petition may not be approved.

Another issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

> Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(I) states:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. 214.2(l)(1)(ii)(J) states:

Branch means an operating division or office of the same organization housed in a different location.

8 C.F.R. 214.2(l)(1)(ii)(K) states:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. 214.2(l)(1)(ii)(L) states, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In her decision, the director noted that the U.S. and foreign entities are owned and controlled by two different groups of individuals.

The record reflects that the foreign entity [redacted] owned as follows:

[redacted]	2,400 shares
	1,250 shares
	1,250 shares
	50 shares
	50 shares

The record reflects that the U.S. entity, [redacted] is owned as follows:

The document entitled Resolutions Adopted By Unanimous Written Consent of the Shareholders and Directors of [redacted] state in part that "We, [redacted] the President and Secretary of [redacted] the sole shareholder and [redacted] as members of the Board of Directors [redacted]

The above documentation submitted by the petitioner does not demonstrate a qualifying relationship as defined by the Service. The petitioner and the foreign entity are owned by separate individuals. The record does not demonstrate that a parent, branch, subsidiary or affiliate relationship exists between the U.S. and foreign organizations. Therefore, a qualifying relationship cannot be found to exist between the two entities. For this additional reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.